

Southend-on-Sea City Council

Agenda
Item No.

To
Cabinet

On
29 September 2022

Report prepared by: Joanne Stowell Director of Public
Protection

Procurement Options for The Stray Dog Service

Relevant Scrutiny Committee – Policy and Resources Scrutiny Committee

Cabinet Member: Councillor Martin Terry- Cabinet Member for Public Protection

Part 1 (Public Agenda Item)

1. Purpose of Report

1.1 The stray dog service has 3 service elements, these being:

- The Animal Warden (Council Service)
- The Kennelling of Strays Until Re-united or Re-Homed (Contracted (Lot 1))
- The Acceptance Point Where Strays Are Held Out Of Hours Until Collected For Kennelling (Via an Agreement)(Lot 2)).

1.2 The contract for the Kennelling element was awarded to the current kennelling provider on the 1st April 2009 to the 31st March 2010. The contract was awarded on a 1 year basis with no option to extend, and had a schedule of rates for various elements that was applied on a 'per dog' basis.

1.3 There was no contract for the Acceptance Point, instead the provision of this element was secured via a written 'Agreement' with a separate provider on the 1st April 2008. This agreement had a scheduled rate that was applied on a 'per dog basis'. The Agreement did not have an end date. In February 2022 the provider informed the Council that they would cease furnishing this Agreement from July 2022.

1.4 There have been 2 separate compliant attempts to procure a replacement to the original contract, however, these failed due to circumstances beyond the control of the Council. Whilst the procurement exercise was not successful, it is important to note that due to arrangements with the current kennelling and acceptance point providers, the service never lapsed. Notwithstanding as the contract for the Kennelling has significantly lapsed, and as the Acceptance Point Agreement has now ceased, this report is necessary to determine the future extent of the Stray Dog Service and agree the options for the future procurement of the service.

2. Recommendations

That Cabinet:

- 2.1 Note the contents of the report and;
- 2.2 Agree to the proposed procurement of the Stray Dog Service, as outlined in Option five para 4.9 -10 of this report.

3. Background

Stray Dogs Legislative Framework

- 3.1 The Council has a statutory duty under sections 149 and 150 of the Environmental Protection Act 1990 (EPA 199) and the Environmental Protection (Stray Dogs) Regulations 1992 (the 1992 Regulations) to collect and detain stray dogs. Prior to April 2008, the Police also had a duty to accept and detain stray dogs and tended to facilitate this function out of hours.
- 3.2 There is no statutory definition of a stray dog. Any dog found in a public place, or a private place where it should not be, which appears to be without its owner and not under the control of its owner or a person representing them, may be seized and detained as a stray dog by an appropriate person.
- 3.3 On 6th April 2008, section 68 of the Clean Neighbourhoods and Environment Act 2005 (CNEA 2005) came into force. This removed from the legislation any requirement for the Police to seize stray dogs or to accept any brought to them. As a result, Local Authority duties were extended, and they now have sole responsibility for discharging all stray dog functions.
- 3.4 The Department for Environment, Food and Rural Affairs (DEFRA) produced comprehensive guidance on stray dogs for Local Authorities, within which it states that the minimum requirement of the Local Authority's extended duty is, that **where practicable, they provide a place to which dogs can be taken outside normal office hours** (referred to in this guidance as an 'acceptance point'). Authorities are not required to offer a night-time call-out service to seize and detain stray dogs seen or found by the public. However, contact numbers for out of hours cover should be widely publicised to enable 'finders' to take a dog to an acceptance point if one is provided in lieu of a warden service. Whilst there is no statutory requirement to provide an out of hours collection service for stray dogs, the provision of an Acceptance Point is expected (where practicable), and there is a risk to the reputation of the Council should the provision of an Acceptance Point be removed, as in declining to do so may result in dogs being left to roam the streets, and relies on the goodwill of residents to capture and detain dogs overnight.

Delegated Functions

- 3.5 The Council has a legal duty under the Environmental Protection Act 1990 s149 to appoint an officer for the purpose of discharging the functions imposed or conferred by the legislation for dealing with stray dogs found in the area of the authority. In Southend-On-Sea, the Executive Director of Neighbourhoods and Environment retains the overall responsibility for ensuring that the authority's stray dog functions are discharged correctly. The authority for discharging functions can be delegated to third parties such as contractors, as is the case for Southend.

Procurement History

- 3.6 The contract for the Kennelling element was awarded to the kennelling provider on the 1st April 2009 to the 31st March 2010, it was awarded on a 1 year basis with no option to extend, and contained a schedule of rates for various elements, and these were applied on a 'per dog' basis. This contract has completely lapsed, however, the provider continues to provide the service.
- 3.7 There was no contract for the Acceptance Point, instead the provision of this element was secured via a written 'Agreement' with a separate provider on the 1st April 2008; however, in February 2022, the provider informed the Council that in July 2022 they would cease this provision.
- 3.8 There have been 2 separate compliant attempts to procure a replacement to the original contract, however, these failed due to circumstances beyond the control of the Council. In round one, 1 bid was received, but then retracted due to TUPE implications associate with the Animal Warden role. However, in connection to this a technical response and commercial response from the kennelling provider was received.
- 3.9 A 2nd further procurement exercise was undertaken in 2020, whereby a shared service between Basildon, Castle Point, Rochford and Southend was explored. However, as Basildon Council eventually declined to continue, this arrangement did not proceed.
- 3.10 Following advice from Procurement, it has been established that these service elements must be formally re-procured. In the interim period, the Council's Legal Services have drafted an implied contract with the kennelling provider, and currently, they are also picking up stray dogs out of hours, as there is no acceptance point, and have agreed to continue for the immediate future.

Current Scope of the Stray Dog Service

- 3.11 The stray dog service has 3 service elements, these being:
- The Animal Warden (Council Service)
 - The Kennelling of Strays Until Re-united or Re-Homed (Contracted)
 - The Acceptance Point Where Strays Are Held Out Of Hours Until Collected For Kennelling (Via an Agreement)).

The Animal Warden

- 3.12 The Council has an in-house Animal Warden (1 FTE level 7) whose work covers animal welfare, licensing of animals, illegal imports of animals and nuisance complaints. The Animal Warden operates weekdays from 8:30 to 5:30, and collects and delivers the dogs to the kennels, and picks them up from the acceptance point. The responsibilities in this area equate to .8FTE, and the remaining .2FTE delivers to the stray dogs' service dog warden element. In brief, if a stray is reported by the public during office hours, it will be seized and detained by the Animal Warden. Checks are then undertaken to ascertain whether the dog can be identified and reunited with the owner. If reunification is not possible, the Animal Warden transports the dog to the kennelling provider, and also picks up those dogs that have been delivered to the Acceptance Point over night on a weekday.

The Kennelling Provider

- 3.13 The kennelling provider provides the following service:

- A collection service from the Acceptance Point (Monday to Friday daytimes)
- A collection service from the Acceptance Point (weekends)
- The provision of 6 reserved kennels 365 days a year
- Reuniting strays with owners
- Rehoming Strays
- Microchipping
- Statutory administration including the collection of statutory fees (kept by provider, and used to offset their cost)

- 3.14 On arrival, the dog is health checked and fed, and staff also attempt to identify the dog's owner by checking for a microchip or collar, if ownership is established, staff will attempt to reunite the dog with its owner. If the owner cannot be established, it is held for the statutory 7-day period. From day 1 of the dog being seized, under statute an owner has 7 days to claim the dog, and on full payment of fees plus satisfactory documentation for proof of ownership, the dog would be released back into the owner's care.

- 3.15 From day 8, the dog automatically becomes the property of the Council, and can be put forward for re-homing at this point, or be passed on to a stray dog establishment, or be euthanised. To be clear, euthanasia is only applied to dogs which are either a banned breed (in accordance with the Dangerous Dogs Act 1991) or unsuitable for re-homing due to behavioural or health issues, as determined by a vet.

- 3.16 Under current arrangements, once the statutory 7-day period has been reached, the dog becomes the property of the kennelling provider, and is accepted into their re-homing programme, and the Council is no longer liable for any costs associated with the dog.

- 3.17 The kennelling provider also covers the .2FTE functions of the Animal Warden on the weekends, bank holidays and during illness and annual leave.

The Acceptance Point

3.18 This element is a facility which receives dogs out of hours from 17:30 to 22:00hrs, during which time staff:

- Record a brief description of the dogs, when they were brought in and endeavouring to obtain information of where they were found together with details of the persons handing them in.
- Provide overnight kennelling of the dogs and tend to their basic needs of water and bedding.
- In the case of an emergency as determined by a vet, provide necessary medical and surgical treatment, to relieve pain, and render the dog as comfortable as reasonably possible.

Fees – Stray Dogs

3.19 Under Section 149(5) of the EPA 1990, the authority may charge the owner all expenses incurred during the dog's detention plus a further £25 as prescribed by the 1992 Regulations. The expenses are calculated as the per-day kennel cost, plus any costs involved in detaining the dog. Any additional charges authorities incur resultant from necessary veterinary treatment of injured dogs are also added. The fees are:

- Statutory fee - £25 which is payable in all cases.
- Transportation and return fee - £57.
- Daily kennelling charge - £17 per day.

All payments are made to the kennelling provider directly, and the statutory fees are deducted from the Council's monthly invoice. An authority is within its rights to detain a dog until the owner has paid the full amount, and as explained previously, the dog becomes the property of the Council after the statutory 7 days.

Performance Kennelling

3.20 The performance of the kennelling provider with regards to Lot 1 has been good, there have been no complaints made against the company. Additionally, audit checks on the designated kennels confirmed that the welfare of the animals was high, the facilities were clean and tidy, and that staff appeared to dedicate a considerable amount of time with each dog, all of which were walked at least twice a day.

Performance Acceptance Point

3.21 As with Lot 1, there have been no performance issues with regards to this element, which is undertaken at a Veterinary Practice.

Service Statistics

3.22 Using 3 years of statistics, on average, the service receives 120 stray dogs per annum

- 41.7% are received during office hours;
- 55% in the evening/weekends and
- 3.3% after 22:00hrs.

Current Contract Stray Dogs - Contract Term and Value – Kennelling

- 3.23 The current contract commenced on the 1st April 2009, the contract term was for 1 year, with no discretionary option to extend. The original contract contained a schedule of rates, pertaining to various elements specific to kennelling per day, standby call out charges, admin fees and microchipping etc. It also contained a fixed cost element of £3,024 for the reservation of 3 kennels of the summer period (July to September).
- 3.24 As the contract lapsed in 2010, the pricing and provision element (including the reservation of kennels) has increased. The Council now reserves 6 kennels a day covering 365 days, and the fixed cost for this element is currently £10,950 annually. Other variable elements such as admin charges are still applied on a per dog basis annually.
- 3.25 As the contract is lapsed, the current price has been determined by establishing an average annual cost (average over a 3-year period) which is a fixed cost of £10,950 and variable costs of £17,163.58, therefore totalling **£28,113 per annum**. On average, £2,105 of statutory fees are collected annually, and this amount is deducted from the final price. As such, the average annual cost of this element (Lot 1) is **£26,008**.

Current Contract Stray Dogs - Agreement Term and Value – Acceptance Point

- 3.26 The Agreement in relation to this element was signed on the 1st April 2008, and has remained in place, as there was no fixed term.
- 3.27 The extent of the agreement was to provide an acceptance point for stray dogs out of hours, up to 22:00hrs, 365 days a year, whereby members of the public could drop off strays to the agreed point. A fixed cost of £100 per dog was agreed, and included the elements stated in para 3.18.
- 3.28 With regards to the cost of carrying out any emergency treatment of dogs, this is subject to a maximum financial mandate of £100.00. Any treatment costs that exceed, or are likely to exceed the mandate, are subject to prior authorisation by an officer of SCC.
- 3.29 The annual cost for this element was established over a 3-year period, which gave an annual cost of £755. However, in February 2022, the provider for this element informed the Council that they would not continue with the arrangement from July 2022.
- 3.30 From July 2022, interim arrangements have been put in place, and the kennelling provider has agreed to receive dogs after 17:30hrs until 22:00hrs, 7 days week at a cost of £350.00 +VAT / month plus an additional cost of £30.00 if they are required to collect the dog. If this element remained in place the cost would be £4,200 + VAT per annum.

4. Other Options

4.1 Option One: Bring in house

4.1.1 The option to bring the service in-house has been discounted, as the capital and ongoing revenue costs would exceed those of the current arrangements. Moreover, the demand of the service would not warrant the financial commitment, and there would be no return on investment.

4.2 Option Two: Provide Collection and Kennelling Only – No Acceptance Point (One Lot)

4.2.1 Scope the service on the same basis as it is now, e.g. retain the collection, kennelling and reunification of dogs arrangements as they are, on a 3+2 year basis, but **do not provide an acceptance point**.

Positives

- No TUPE implications, as the Animal Welfare Officer is retained to undertake the .2FTE duties and is still available for the .8FTE additional licensing and welfare work;
- The service arrangements ran well;
- This arrangement would meet the need of the daytime, evening and weekend demand;
- This would be the lowest cost option (but still higher than current spend).

Risks

- This Option does not provide for an Acceptance Point after 22:00hrs. It could be argued that the low number of dogs accepted out of hours (3.3%) does not present a significant risk. However, dogs (including dangerous breeds) may be left straying, and the Council's reputation could be adversely affected should this element be removed.
- There is a risk that no bids will be received.

4.3 Option Three: As Per Option Two but Include Acceptance Point (One Lot)

4.3.1 Scope the service mainly as per option two, but include requirement to provide acceptance point, and tendered within one lot.

Positives

- Mainly as per option two, plus;
- Benefit of an out of hours acceptance point;
- Only one contract to manage;
- May offer Best Value.

Risks

- As the market is very narrow, a single supplier may not be able to provide both service elements. This was the Council's experience previously, as no bids were received;
- Higher costs than the previous arrangement.

4.4 Option Four: As Per Option Three, But Tendered As Two Separate Lots (Lot 1 Kennelling, Lot 2 Acceptance Point)

4.4.1 Scope the service mainly as per option three, and tendered within two separate lots.

Positives:

- Mainly as per option two, plus;
- Increased likelihood of a bid for the Acceptance Point Element.

Risks

- As per Option three, plus;
- Two Contracts to manage;
- Potentially more expensive.

4.5 Option Five: As Per Option Three but Offer the Acceptance Point Element as a Direct Award to South Essex Property Services (SEPS)

4.5.1 South Essex Property Services (SEPS) is part of the South Essex Homes Group (SEH), which has been providing services to the buildings, open spaces and communities of South Essex since 2005. SEPS is a stand-alone company, that is able to benefit from the Teckal exemption, which allows councils to run services without going through a procurement process.

Positives

- A direct award will save on time and procurement costs.

Risks

- There may be a challenge from external interested parties. This could however be negated if we can evidence best value.

4.6 Option Six: Shared Service with Other Boroughs

4.6.1 The option of exploring a shared service shared service has been discounted due to the previously failed exercise. However, this option can be explored further at a later date.

4.7 Preferred Option

4.7.1 All Options include keeping the Animal Warden in house, otherwise this would create a gap in service provision for animal welfare responsibilities and licensing, and would invoke TUPE rules, which previously led to a failed tender exercise (namely because an external supplier would need to become a member of the

Local Government Pension Scheme which carries costs and risk for small suppliers).

4.7.2 The preferred Option is 5, for the reasons 1-4 as set out in para 5.1 below.

4.7.3 Should a direct award for Lot 2 not be acceptable, Option 4 would be preferred, for the reasons 1-2 & 4 as set out in para 5.1 below.

4.8 Future Procurement Pathway Options

4.8.1 Following any agreement, Officers would initiate a formal tender process, and would publicise and carry out an open tender process for the provision of kennelling (Lot 1). It would be intended that the term of the contract would be for three years, with a discretionary 2-year (1+1) extension option built in.

4.8.2 With regards to Lot 2, Officers would make a direct award. However, should Option 5 be rejected, and Option 4 preferred, the formal tender process would include both Lot 1 (Kennelling) and Lot 2 (Acceptance Point).

4.8.3 Should an alternative Option be preferred, Officers would determine the appropriate route once the decision has been made.

5. Reasons for Recommendations

5.1 Southend-on-Sea City Council has a statutory duty to deliver a service that provides for the collection and kennelling of stray dogs. Current arrangements have lapsed, and it is necessary to re-procure the service. Option 5 as outlined in paras 4.7 is the preferred option for the following reasons:

- The current arrangements in term of service scope work well;
- The provision of an Acceptance Point is deemed necessary, as to remove this element leaves the Council open to reputational risks arising from a decision that would potentially allow stray dogs to roam;
- The ability to make a direct award for the Acceptance Point provides security and minimises procurement costs;
- The anticipated cost of an Acceptance Point is lower than the risk posed of removing this element.

6. Corporate Implications

6.1 Southend 2050 is the City's shared ambition for the future, it includes six themes, each with associated outcomes, the themes are:

1. Pride and Joy
2. Safe and Well
3. Active and Involved
4. Opportunity and Prosperity
5. Connected and Smart and
6. Future Ways of Working

- 6.2 As such, the provision of the stray dog service addresses nuisance issues potentially created by the presence of stray dogs and makes a particular specific contribution to themes 1 and 2.
- 6.3 Additionally, as it is likely that bids will be received from local companies, a by-product of procuring is that the prosperity of the City is enhanced.

7. Financial Implications

- 7.1 The Stray Dog Service is currently delivered on a fixed fee basis with an additional cost per dog. The variable element of this means that the cost of the service will flex in line with the number of strays collected (on average 120 per year).
- 7.2 The current budget provision of £33,500 will be used as a benchmark for the new procurement which will be scored against both quality and price.

8. Legal Implications

- 8.1 The Council has a statutory duty to deliver a service that provides for stray dogs, which the Council currently discharges using an outside contractor. In providing a service, there is no legal requirement to offer a night-time call-out service to seize and detain stray dogs seen or found by the public. Additionally, whilst there is no statutory obligation to provide an Acceptance Point, the minimum requirement of the Local Authority's extended duty is, that where practicable, they provide a place to which dogs can be taken outside normal office hours.
- 8.2 Should the provision of an Acceptance Point be removed, there is a risk to the reputation of the Council in not providing one, as residents may not be willing to accommodate dogs overnight, and strays may be left roaming.

9. People Implications

- 9.1 This paper's recommended approach has no specific People implications.

10. Property Implications

- 10.1 This paper's recommended approach has no specific Property implications.

11. Consultation

- 11.1 There is no requirement for consultation to take place ahead of procuring this contract.

12. Equalities and Diversity Implications

- 12.1 SCC wants to ensure that it provides services and strategies which address the needs of all members of the community. As such, the Council conducts Equality Impact Assessments as strategies, policies and services are developed to:

- Consider issues relating to age, disability, gender, gender reassignment, race, religion & belief and sexual orientation;
- Obtain a clearer understanding of how distinct groups may be affected;
- Identify changes which may need to be built into an initiative as it is developed;
- Comply with legislative requirements and identify good practice.

12.2 By working on the four priority areas identified, there will not be unlawful discrimination or contradictions under the European Convention of Human Rights.

12.3 There is no evidence to suggest that the terms of the contract for either lot 1 or 2, would have a negative impact on any vulnerable group.

13. Risk Assessment

13.1 Failure to maintain effective arrangements for the seizure and collection of stray dogs would place the Council in breach of its statutory obligations and potentially lead to an increase in stray dogs roaming in the City.

14. Value for Money

14.1 Should the procurement route via competitive tender, this will result in bids for both lots being scored for both quality and price. However, a direct award in respect of Lot 2 will provide efficiencies in costs and time.

15. Community Safety Implications

15.1 The preferred option provides a service both inside, and outside of office hours, and this level of provision has worked well to date. Should a reduced service be preferred, nuisance from stray dogs (including aggression and dog fouling), may increase.

16. Environmental Impact

16.1 There are no immediate sustainability or climate change concerns associated with this report, however, local environmental quality is improved through the control of stray dogs.

17. Background Papers

17.1 There are no background papers associated with this report.

18. Appendices

18.1 There are no appendices with this report.